

FILED

Apr 02 - 2024

John M. Domurad, Clerk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

APRIL CHANDLER,
Plaintiff,

vs.

MICHAEL MALOY
Defendant

Case No.: 324-CV-206

SUPPLEMENTAL
MEMORANDUM OF LAW

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8
9 MICHAEL MALOY
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Case No.: 324-CV-206

**SUPPLEMENTAL
MEMORANDUM OF LAW**

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12
13 **DEFENDANT'S SUPPLEMENTAL MEMORANDUM IN SUPPORT OF HIS MOTION**
14 **TO DISMISS PLAINTIFF'S AMENDED COMPLAINT**

15
16 **INTRODUCTION**

17
18 In the interests of justice and judicial economy, Defendant submits this Supplemental
19 Memorandum of Law in support of his motion to dismiss Plaintiff's amended complaint in
20 accordance with FRCP 12(b)(6) **Failure to State a Claim** and 12(b)(3) **Improper Venue**.

21
22 As set forth in greater detail in the Memorandum, Plaintiff has:

- 23 1) Failed completely to set forth material facts which relate to any conduct (good or bad) which
24 relates in any manner to defendant.
25 2) Failed to establish proper venue.
26

ARGUMENT

1) Actions are subject to dismissal when there is a **Failure to State a Claim** under Rule 12(b)(6) where the allegations in a complaint are insufficient to establish a cause of action.

All federal civil complaints must contain sufficient factual matter to give the claim facial plausibility and allow the court to draw reasonable inference that the defendant is liable for the misconduct alleged. *See* Ashcroft v. Iqbal, No. 07-1015 (U.S. May 18, 2009) which places on plaintiffs the burden of showing that their complaints are adequate, rather than requiring the defendant to prove the pleading's inadequacy, stating 'threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice' and that federal civil complaints must contain 'more than unadorned, the-defendant-unlawfully-harmed-me accusations.' Rather than showing a conceivable right to relief, the plaintiff now must show a plausible, fact-based right to the relief sought. The complaint must do more than allege the plaintiff's entitlement to relief, it must show that entitlement with facts.

Plaintiff's amended complaint contains 'threadbare' recitals of elements which are at best vague and irrelevant and at worst seek to shade the truth or are outright lies.

Language like '*petitioner was cautious given defendant's friendship with Greg Ellis and something didn't feel right*' (paragraph 4 in the amended complaint) or '*defendant Michael Maloy ghosted petitioner*' (paragraph 6 in the amended complaint) are examples of this vagueness and hardly causes for action.

1 Language like *'defendant was introduced as a work made for hire editor'* (paragraph 3 in the
2 amended complaint) or *'after the petitioner completed the film narration and produced and*
3 *directed the project to fruition'* (paragraph 6 in the amended complaint) are outright lies, easily
4 provable with documentary evidence.
5

6
7 The complaint also contains the conclusory statements that the defendant *'had already filed a*
8 *copyright application, fraudulently failing to disclose that he was work made for hire'*
9 (paragraph 18 in the amended complaint) and *'petitioner believes defendants concocted their*
10 *plan with a clear intention to harm petitioner with a conspiracy to steal petitioner's film and raw*
11 *footage'* (paragraph 26 in the amended complaint). There are no factual enhancements to these
12 conclusory statements and no mention of legal rights plaintiff believes the defendant violated.
13
14

15 Re the copyright conclusory statement, the U.S. Copyright office holds that a copyright work is
16 'made for hire' when a certain type of work is created as a result of an express written agreement
17 between the creator and a party specially ordering or commissioning it that the work shall be
18 considered a work for hire. There was no such written agreement between the parties that
19 contained any language that could be construed as 'work for hire.' (See attached Exhibit #1)
20
21

22 Re the conspiracy conclusory statement, civil conspiracy is not considered a separate cause of
23 action. This means there must be an underlying tort to bring a civil conspiracy claim. If the acts
24 were lawful under tort law, the claim for civil conspiracy would fail. The plaintiff must also
25 prove that the conspirators intended to commit an unlawful or tortious act. Plaintiff here does not
26 cite any torts or applicable laws.
27
28

1 The amended complaint makes a vague claim for relief based on a hypothetical and conjectural
2 estimate of future earnings, '*a substantial sum which could return \$2.5m - \$5m to petitioner paid*
3 *over 3 years for global distribution.*' (paragraph 26 in the amended complaint).

4
5
6 Plaintiff offers no evidence of this that is concrete, particularized, actual or imminent and is
7 therefore not adequate grounds for relief. Plaintiff's predictions of injury are merely speculative,
8 depending on guesses about plaintiff's circumstances.

9
10
11 2) Actions are subject to dismissal when there is an **Improper Venue** defense under Rule
12 12(b)(3) when the venue where the action is filed is incorrect.

13
14 Generally in civil court, where the defendant lives and the extent to which the lawsuit is tied to a
15 specific location are key considerations when determining venue. Usually, venue is in the county
16 where the person being sued lives or does business or the dispute arose, for example where a
17 contract was entered into or broken.

18
19
20 According to 28 U.S. Code § 1391 which governs all civil actions in district courts of the United
21 States, a civil action may be brought 1) in a judicial district in which any defendant resides, if
22 all defendants are residents of the State in which the district is located, 2) a judicial district in
23 which a substantial part of the events or omissions giving rise to the claim occurred and most
24 importantly in this case, 3) if the jurisdiction is based in whole or in part on the presence of a
25 case which 'arises under the Constitution, laws or treaties of the United States', the venue is
26 limited to the district where the defendant resides.

1 Defendant Michael Maloy lives and does business in Los Angeles County, California. As
2 evidenced by Plaintiff's Exhibit #5, pages 18- 19 (Document 13, filed 3/6/24) Plaintiff's business
3 address is in Los Angeles County.
4

5
6 The plaintiff's case relies in part on its federal jurisdiction due to a claim that U.S. Copyright law
7 was violated.
8

9 Furthermore, the contract that is the predicated event for this case contains this language:
10

11 *'This agreement shall be construed, interpreted and governed by the laws of the State of*
12 *California.'* and, *'All disputes, which may arise between or among the parties hereto under or*
13 *with respect to this Agreement, will be determined solely by arbitration in accordance with the*
14 *rules of the American Arbitration Association.'* (See attached Exhibit #1)
15

16
17 Relying on the arguments above, defendant asserts that this court's venue is improper.
18
19
20
21
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1 **CONCLUSION**

2

3 For the aforementioned reasons, Defendant respectfully requests that the court should dismiss the

4 case with prejudice under Federal Rules of Civil Procedure 12(b)(6) and 12(b)(3).

5

6 An accepted principle of judicial restraint is that federal courts will address only 1) an actual case

7 or controversy and 2) there can be no case or controversy without a plaintiff who has suffered

8 actual or imminent injury traceable to defendant's conduct and who, therefore, has standing to

9 sue.

10

11 Upon information and belief, I assert that plaintiff has no standing on which to sue.

12

13

14 Respectfully,

15

16 4/2/24

17 

18 Dated

Signature

19 Michael Maloy

440 N. Venice Blvd, Venice, CA 90291

20 Name

Address

21 310-962-3122

Maloytv@mac.com

22 Telephone Number

E-mail Address

1 **EXHIBIT #1**

2 Contract between defendant and plaintiff.

3
4 **LETTER OF AGREEMENT**

5 Dated: January 5, 2023

6 Re: Fountain Of Youth Documentary Project

7 This letter sets forth the material terms of the agreement ("*Agreement*") between
8 Empirical Media ("*Producer*,") and April Chandler/Mephobia Media ("*Executive*
9 *Producer*"), with respect to the production of a documentary project tentatively entitled,
10 "The Fountain Of Youth" as follows:

11 1. In collaboration with Executive Producer, Producer will create a revised
12 version of the existing documentary.

13 2. Producer, for a fee not to exceed \$75,000, will manage all aspects of the
14 creation and delivery of the documentary, including writing, editing, graphics, music,
15 voice-over, audio mix and color correction.


16 3. Terms of payment are as follows: Upon execution of the agreement, 50%
17 of Producer's fee; 25% upon approved final edit; 25% upon delivery.

18 4. All disputes, which may arise between or among the parties hereto
19 under or with respect to this Agreement, will be determined solely by arbitration in
20 accordance with the rules of the American Arbitration Association


21 5. This agreement shall be construed, interpreted and governed by the
22 laws of the State of California applicable to agreements entered into and wholly
23 performed therein and is a binding contract between and among the undersigned.
24 Facsimile counterparts shall be deemed acceptable. Please indicate your agreement
25 with the foregoing by signing in the space provided below.

26 Very Truly Yours,

27 **ACCEPTED AND AGREED:**

28 

Michael Maloy
Empirical Media



April Chandler
Mephobia Media

Date: _____ 1/23/23

Date: _____ 1/23/23

CERTIFICATE OF SERVICE

I, Michael Maloy, hereby certify that on the 2nd day of April, 2024, I sent a copy of this filing to Plaintiff at her last known address via first class mail.

April Chandler

200 Washington Avenue

#7181

Endicott, NY 13760

4/2/24

Date



Signature